



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF THE SECRETARY
WASHINGTON, DC 20410-0001

Interim Instructions Regarding Communications with Registered Lobbyists about Recovery Act Funds

On March 20, 2009, President Obama issued an Executive Branch- wide Memorandum entitled, "Ensuring Responsible Spending of Recovery Act Funds" (enclosed). Section 3 of the President's Memorandum mandates interim specific protocols for oral communications with registered lobbyists. The Director of OMB is directed to evaluate agencies' experience with the Memorandum's requirements within 60 days and to recommend potential adjustments or modifications to the Memorandum.

This interim guidance outlines the actions you are required to take, effective immediately, whenever you receive or participate in oral or written communications with any outside persons or entities regarding Recovery Act funds. The purpose of the President's Memorandum and this initial guidance is to promote transparency in communications with Federally registered lobbyists and facilitate Federal agencies' merit-based decision-making in awarding Recovery Act funds. Accordingly, your communications with Federally registered lobbyists should proceed, but in compliance with the following protocol:

A. Unrestricted Oral Communications with Registered Lobbyists on Logistical Questions Related to the Recovery Act

The President's Memorandum does not place any restrictions on communications with registered lobbyists concerning general questions about the logistics of Recovery Act funding or implementation. Such matters include a request for a meeting, a request for the status of an action, or any other similar administrative request, if the request does not include an attempt to communicate about Recovery Act policy or a particular project or application for funding under the Recovery Act.

The following general topics of discussion, for example, all may fall within the category of general questions about logistics or implementation, which are not covered by the President's Memorandum:

- (1) how to apply for funding under the Recovery Act,
- (2) how to conform to deadlines,
- (3) to which agencies or officials applications or questions should be directed, or
- (4) requests for information about program requirements and agency practices under the Recovery Act.

B. Unrestricted Public Oral Communications with Registered Lobbyists at Widely Attended Gatherings

The President's Memorandum is aimed at furthering the transparency of oral communications between Federal officials and registered lobbyists concerning the Recovery Act. Such transparency aims are achieved with respect to public communications made at widely attended gatherings that are attended by either a large number of people from throughout an industry or profession, or by those representing a wide range of interests (the term "widely attended gathering" is defined and implemented in ethics regulations at 5 C.F.R. § 2635.204(g)(2) and related interpretive guidance, and is regularly construed and applied by your designated agency ethics official). Thus the President's Memorandum imposes no further restrictions on such public oral lobbyist communications.

The restrictions below, however, apply to private (non-public) oral communications between Federal officials and Federally registered lobbyists that may happen to occur at, or on the heels of, a widely attended gathering.

C. Oral Communications with Federally Registered Lobbyists on Recovery Act Policy Matters or in Support of Specific Projects or Applicants for Funding

Other than the above situations, if you communicate with or are contacted, via telephone or in-person, by any persons outside the Federal government (including persons associated with for-profit companies, non-profit organizations and State and local governmental entities) regarding Recovery Act matters, you should ask if any person participating in the oral communication is a Federally registered lobbyist. If any person is a Federally registered lobbyist, please take the following steps:

(1) Inform the person(s) of applicable restrictions, a sample template of which follows:

"Under the President's Memorandum, we cannot engage in any oral communications with Federally registered lobbyists about the use of Recovery Act funds in support of particular projects, applications, or applicants. All such communications by Federal lobbyists must be submitted in writing, and will be posted publicly on our agency's recovery website within 3 days."

"If the oral communication is about general policy issues concerning the Recovery Act and does not touch upon particular projects, applications or applicants for funding, a Federally registered lobbyist may participate in the conversation. We will document the fact of the policy conversation in writing, including the name of the lobbyist and other participants, together with a brief description of the conversation, for public posting on our agency's recovery website within 3 days."

(2) If the oral communication proceeds with the participation of a Federally registered lobbyist, you should discuss only logistical questions or provide information regarding Recovery Act programs (as outlined in part A above) or general policy issues concerning

Recovery Act funding, not particular projects, applications, or applicants for funding. Examples of general policy issues concerning the Recovery Act include discussions supporting funding of certain general populations, categories of projects, or broad geographical areas.

You may not, however, orally discuss particular projects, applications, or applicants for funding with a Federally registered lobbyist. A particular project is:

- (i) a discrete and identifiable transaction, or set of transactions
- (ii) in which specific parties have expressed an interest.

Ordinarily, the first expression of an interest by a specific party will be when an initial proposal or application (such as a response to requests for proposals) is received by the Government. In other circumstances, however, there may be sufficient indications that a party is interested in a specific project or application earlier in the process, and in those instances, the matter should be considered a particular project or application. The President's Memorandum applies to communications prior to the award of a grant or other Recovery Act funding; it does not restrict grant recipients' representatives' ability to communicate with officials regarding the administration of a grant that has already been awarded.

If a conversation in which a Federally registered lobbyist is participating moves to particular projects, applications, or applicants for funding, you should end the conversation and request a written statement be submitted.

(3) Document each in-person or telephonic conversation concerning Recovery Act policy matters with a registered lobbyist immediately after the conversation. More guidance will be published soon on how to post information to the web page. Meanwhile, please capture the following information:

- (i) the date of contact,
- (ii) the names of the parties to the conversation,
- (iii) the name of the lobbyist's client(s), and
- (iv) a general, one-sentence description of the substance of the conversation.

Additionally, until such time as the form is posted on HUD@work forms, the attached form may be used to capture the information.

D. Written Communications from Federally Registered Lobbyists

In addition, with regard to all written communications you receive from Federally registered lobbyists regarding specific projects, applications, or applicants for Recovery Act funding, please keep all such communications. This will also be posted to the website.

Also, if you have any questions about the President's Memorandum, or this guidance, please refer to the attached "Frequently Asked Questions" which provides specific examples or submit your questions to: http://portal.hud.gov/pls/portal/url/page/Recovery/contact_us. (Note: coming soon) Your questions will be answered via email.

The President's Memorandum provides for the Director of OMB to assist and issue additional guidance, as needed, to facilitate Executive Branch-wide implementation of these requirements. The memo can be found at: The President's Memorandum also directs OMB to evaluate agencies' experience with the Memorandum's initial requirements within 60 days and to recommend adjustments or modifications to the protocol outlined in the Memorandum. To that end, you should feel free to forward your questions, experiences, and feedback regarding the President's Memorandum to OMB's General Counsel's office, at recoverycommunications@omb.eop.gov.

Attachments:

- (1) Frequently Asked Questions
- (2) Registered Lobbyist Contact Disclosure Form
- (3) President Obama's Memorandum "Ensuring Responsible Spending of Recovery Act Funds" (March 20, 2009)